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10/799,397

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EXAMINER

STULII, VERA

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

05/16/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                                      |                                   |  |
|------------------------------|--------------------------------------|-----------------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/799,397 | <b>Applicant(s)</b><br>ROY ET AL. |  |
|                              | <b>Examiner</b><br>VERA STULII       | <b>Art Unit</b><br>1794           |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 31 August 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,6-19,23-45 and 57-62 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,6-19,23-45 and 57-62 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>8/27/08</u> .   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

**Claims 1 and 6-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Narayanaswamy et al. (US 6,165,524) in view of Navarro (US6, 312, 741).**

Narayanaswamy et al. discloses a shelf-stable ready-to-bake batter article for baked goods (Abstract).

In regard to claim 1, Narayanaswamy et al. disclose dry ingredients for use in a batter such as flour (Col.2 line 44), leavening system (Col. 10, lines 9-8), and encapsulated acid (Col.10, line 10). Narayanaswamy et al. disclose batter comprising about 10 to 40% flour and about 5 to 30% moisture (Col. 3 lines 3, 5,11).

Narayanaswamy et al. disclose that “the batters herein preferably further comprise only conventional Chemical leavening system” (Col. 10 lines 7-8). Narayanaswamy et al. disclose “in a preferred method of preparation, a preblend of the dry ingredients is made” (Col. 10 lines 42-43). Narayanaswamy et al. also disclose that “For greater convenience and shelf stability, dry mixes for baked goods have long been available. The consumer mixes the dry mix with liquid ingredients such as water, milk, oil and/or eggs to form a batter. The batter is then immediately poured into a baking pan and baked to form the finished baked goods” (Col. 1 lines 24-29).

In regard to claims 17-18, Narayanaswamy et al. disclose “while the invention is specifically described in terms of improved baked goods, such as layer cakes, muffins, quick breads, cupcakes, biscuits, baked corn bread, the batters can be used for or formulated for use to prepare other cooked farinaceous goods within the scope of this invention including griddle cakes such as pancakes, crepes or cornbread, Irish soda bread or waffles. Also, while the present articles are especially suited for use for preparing leavened finished goods, other finished goods can also be prepared therefrom” (Col. 8 lines 19-27).

In regard to claim 6, Narayanaswamy et al. disclose use of propionic acid (Col.14, Claim 26).

In regard to claim 7, Narayanaswamy et al. disclose use of about 20%-70% sugar (Col.3, line 4).

In regard to claim 8, Narayanaswamy et al. disclose use of about 1% to 25% of an edible fat or shortening (Col.5, lines 11-12).

In regard to claim 9, Narayanaswamy et al. disclose use of about 1% to 8% of emulsifiers (Col.6, lines 40-41).

In regard to claim 10, Narayanaswamy et al. disclose use of about 1% to 8% of a humectant (Col.7, lines 64-68).

In regard to claim 11, Narayanaswamy et al. disclose use of hydrophilic colloid (Col. 8, lines 51-58).

In regard to claim 12, Narayanaswamy et al. disclose use of starch (Col.2, line 46).

In regard to claim 13, Narayanaswamy et al. disclose use of non-fat dry milk solids (Col.9, lines 23-25).

In regard to claim 14, Narayanaswamy et al. disclose use of flavor agents (Col.9, lines 8-13).

In regard to claim 15, Narayanaswamy et al. disclose use of coloring agents (Col.9, lines 8-10).

In regard to claim 16, Narayanaswamy et al. disclose use of edible inclusions such as butterscotch, chocolate, peanut butter chips, etc (Col. 9, lines 11-13).

Narayanaswamy et al. do not disclose dry mix composition, particular amount of flour in dry mix composition, particular leavening acid used, particle size and amount of leavening acid, cake donuts as a bakery product, fried bakery product.

Navarro discloses a method of providing an acid environment in baked goods and increasing its shelf life (Col. 1 lines 5-18). Navarro discloses "The ingredient is a monodispersed fumaric acid particulate having a mean particle size of from about 70 microns to about 140 microns which is encapsulated with a coating having a melting point within normal baking temperature" (Col. 2 lines 39-43). Navarro discloses "The ingredient is substantially cubical and preferably has a coating melting point of above 125 degrees Fahrenheit" (Col. 2 lines 57-58)). Navarro discloses "As a result of the present invention an acid environment conducive to preserving antimicrobial ingredients after baking without deleteriously affecting the bread dough before baking is provided" (Col. 4 lines 19-22).

Since, Narayanaswamy et al. disclose using dry mix composition for the preparation of the shelf stable batter, and Navarro discloses increasing shelf stability in the final baked product by incorporated encapsulated fumaric acid into the dry mix composition, one of ordinary skill in the art would have been motivated to modify disclosure of Narayanaswamy et al and to employ encapsulated fumaric acid for the benefits as disclosed by Navarro. One of ordinary skill in the art would have been motivated to do so in order to increase shelf-stability of the final product without prematurely acidifying the batter/dough as taught by Navarro. Since, Narayanaswamy et al. disclose preparing “other cooked farinaceous goods”, it would have been obvious to one of ordinary skill in the art to modify invention of Narayanaswamy et al and prepare cake donuts or other fried bakery products. Since, Narayanaswamy et al. disclose making a “preblend of the dry ingredients”, and greater shelf stability of dry mixes, it would have been obvious to form a dry mix blend with a higher shelf stability.

**Claims 19 and 23-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Narayanaswamy et al. (US 6,165,524) in view of Navarro (US 6,312, 741).**

Narayanaswamy et al. and Navarro are taken as cited above.

In regard to claim 19, Narayanaswamy et al. disclose dry ingredients for use in a batter such as flour (Col.2 line 44), leavening system (Col. 10, lines 9-8), and encapsulated acid (Col.10, line 10). Narayanaswamy et al. disclose batter comprising about 10 to 40% flour and about 5 to 30% moisture (Col. 3 lines 3, 5,11).

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Narayanaswamy et al. disclose that “the batters herein preferably further comprise only conventional Chemical leavening system” (Col. 10 lines 7-8).

In regard to claims 20-22, Narayanaswamy et al. disclose that batter is shelf stable at room temperature for at least four months.

In regard to claim 23-24, Narayanaswamy et al. disclose “while the invention is specifically described in terms of improved baked goods, such as layer cakes, muffins, quick breads, cupcakes, biscuits, baked corn bread, the batters can be used for or formulated for use to prepare other cooked farinaceous goods within the scope of this invention including griddle cakes such as pancakes, crepes or cornbread, Irish soda bread or waffles. Also, while the present articles are especially suited for use for preparing leavened finished goods, other finished goods can also be prepared therefrom” (Col. 8 lines 19-27).

In regard to claim 25, Narayanaswamy et al. disclose use of propionic acid (Col.14, Claim 26).

In regard to claim 26, Narayanaswamy et al. disclose use of about 1% to 25% of an edible fat or shortening (Col.5, lines 11-12).

In regard to claim 27, Narayanaswamy et al. disclose use of about 1% to 8% of emulsifiers (Col.6, lines 40-41).

In regard to claim 28, Narayanaswamy et al. disclose use of about 1% to 8% of a humectant (Col.7, lines 64-68).

In regard to claim 29, Narayanaswamy et al. disclose use of hydrophilic colloid (Col. 8, lines 51-58).

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In regard to claim 30, Narayanaswamy et al. disclose use of starch (Col.2, line 46).

In regard to claim 31, Narayanaswamy et al. disclose use of non-fat dry milk solids (Col.9, lines 23-25).

In regard to claim 32, Narayanaswamy et al. disclose use of flavor agents (Col.9, lines 8-13).

In regard to claim 33, Narayanaswamy et al. disclose use of coloring agents (Col.9, lines 8-10).

In regard to claim 34, Narayanaswamy et al. disclose use of edible inclusions such as butterscotch, chocolate, peanut butter chips, etc (Col. 9, lines 11-13).

Narayanaswamy et al. do not disclose fried bakery product.

Since, Narayanaswamy et al. disclose using dry mix composition for the preparation of the shelf stable batter, and Navarro discloses increasing shelf stability in the final baked product by incorporated encapsulated fumaric acid into the dry mix composition, one of ordinary skill in the art would have been motivated to modify disclosure of Narayanaswamy et al and to employ encapsulated fumaric acid for the benefits as disclosed by Navarro. One of ordinary skill in the art would have been motivated to do so in order to increase shelf-stability of the final product without prematurely acidifying the batter/dough as taught by Navarro. Since, Narayanaswamy et al. disclose preparing "other cooked farinaceous goods", it would have been obvious to one of ordinary skill in the art to modify invention of Narayanaswamy et al and prepare cake donuts or other fried bakery products.



**Claims 35-45 and 57-62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Narayanaswamy et al. (US 6,165,524) in view of Navarro (US6, 312, 741) and Willyard et al. (US 4,929,464)**

Narayanaswamy et al. and Navarro are taken as cited above.

In regard to claim 35, Narayanaswamy et al. disclose providing about 10 to 40% flour (percentage of flour in the batter), a leavening system; and an encapsulated acid; forming a batter comprising flour, leavening system and about 5 to 30% moisture.

In regard to claims 36, Narayanaswamy et al. disclose that “the batters herein preferably further comprise only conventional Chemical leavening system” (Col. 10 lines 7-8).

Narayanaswamy et al. do not disclose particular leavening acid used, amount of leavening acid, depositing individual-serving size portions of said into heated oil, deep-frying the batter in oil, oil temperature, internal temperature, baking temperature and shelf life of fried/baked product.

Willyard et al. disclose fried donuts (Abstract), forming batter into a desired individual-serving size portions e.g. donuts (Col.3, lines 57-58), and immersing them in heated oil (Col.4, lines 12-14). Willyard et al. also disclose deep-frying such individual-serving size portions in oil having temperature of 350°F (Col.4, line 28). Willyard et al. also disclose internal temperature of 150°F (Col.4, lines 48-50).

Since, Narayanaswamy et al. disclose preparing “other cooked farinaceous goods”, and Willyard et al. disclose deep-frying individual-serving size portions in oil having temperature of 350°F with internal temperature of 150°F, it would have been

obvious to one of ordinary skill in the art to modify disclosure of Narayanaswamy and employ method steps discloses by Willard et al in order to produce desired fried bakery products.

### ***Response to Arguments***

Applicant's arguments with respect to claims rejection under 35 USC 103(a) have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VERA STULII whose telephone number is (571)272-3221. The examiner can normally be reached on 7:00 am-3:30 pm, Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Steve Weinstein/  
Primary Examiner, Art Unit 1794

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